

AMENDATORY SECTION (Amending Order 89-20-064, filed 10/4/89, effective 10/9/89)

WAC 192-04-040 Interested parties. In all cases adjudicated under Title 50 RCW the employment security department is an interested party. Other interested parties are

- (1) **Benefit appeals.** (a) The claimant; ~~((and))~~
(b) Any employer entitled to notice under WAC 192-~~130-060~~~~((12-320))~~, ~~((or))~~ and ~~((defined as))~~
(c) An interested employer as defined in WAC 192-28-125, in cases involving the payment or recovery of benefits, including but not limited to the entitlement to, eligibility for or qualification for waiting period credit or benefits.
- (2) **Tax appeals.** Employers whose contributions, experience rating, benefit charges, or rate of contribution are affected by:
 - (a) An assessment for contributions;
 - (b) A denial of a claim for refund of contributions, interest, penalties;
 - (c) A denial of a request for relief of benefit charges made to their account; or
 - (d) Their determined or redetermined rate of contribution.

AMENDATORY SECTION (Amending Order 89-24-030 filed 11/30/89, effective 1/1/90)

WAC 192-04-050 Appeals -- Petitions for hearing -- Right to notice. Notice of appeal or petition for hearing rights shall be set forth on the face of, or as an attachment to, each of the following:

- (1) Redetermination of an initial monetary determination.
- (2) Determination of allowance or denial of waiting period credit or benefits.
- (3) Redetermination of allowance or denial of waiting period credit or benefits.
- (4) An overpayment assessment or a denial of a request for waiver of an overpayment.
- (5) Order and notice of assessment of contributions, interest, or penalties.
- (6) Denial of a claim for refund of contributions, interest, or penalties.
- (7) Denial of a request for relief of benefit charges made to an employer's account.
- (8) Denial of a redetermination or adjustment of an employer's determined or redetermined rate of contribution.
- (9) Denial of approval or extension of standby status.
- (10) Denial of a request for commissioner approved training or training benefits.
- (11) Notice to separating employer of liability for all benefits paid on a claim as provided in RCW 50.29.021(2)(c).

AMENDATORY SECTION (Amending Order 82-17-052, filed 8/17/82)

WAC 192-16-009 ~~((Interpretative regulations--))~~ **Disqualification for leaving work voluntarily -- Meaning of good cause** for claims with an effective date prior to January 4, 2004--RCW 50.20.050 (1)((and (3))). (1) **General rule.** Except as provided in WAC 192-~~((16-044))~~ 150-050 and 192-~~((16-043))~~ 150-055, in order for an individual to establish good cause

within the meaning of RCW 50.20.050(1) for leaving work voluntarily it must be satisfactorily demonstrated:

- (a) That he or she left work primarily because of a work connected factor(s); and
- (b) That said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and
- (c) That he or she first exhausted all reasonable alternatives prior to termination: Provided, That the individual asserting "good cause" may establish in certain instances that pursuit of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

(2) **Exceptions.** Notwithstanding the provisions of subsection (1) above, neither the distance of the work from the individual's residence, if known at the time of hire nor any other work factor which was generally known and present at the time of hire will provide good cause for voluntarily leaving work unless the individual demonstrates to the satisfaction of the department:

- (a) That the distance from the individual's residence at time of hire is substantially greater than the distance customarily traveled by workers in the individual's job classification and labor market; or,
- (b) That the related work connected circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor; or
- (c) That other work related circumstances would work an unreasonable hardship on the individual if he or she were required to continue in the employment.

(3) **Definitions.** For purposes of subsection (2) above:

- (a) "Distance customarily traveled" means a distance normally traveled by a significant portion of the work force in the individual's job classification in the labor market area;
- (b) "Generally known" means commonly known without reference to specific cases or individuals; and
- (c) "Individual's job classification" means the job classification in which the individual was working when the individual voluntarily left work; and
- (d) A "labor market" is the geographic area in which those workers in the individual's job classification, living in the vicinity of his or her residence, customarily work; and
- (e) "Substantial involuntary deterioration" means an actual and considerable worsening of the work factor outside the control of the individual; and
- (f) "Unreasonable hardship" means a result, not due to the individual's voluntary action, that would cause a reasonable person to leave that employment.

AMENDATORY SECTION (Amending Order 80-10-052, filed 8/6/80)

WAC 192-16-015 (~~(Interpretative regulations)~~) **Leaving work for marital or domestic reasons -- RCW 50.20.050(((4))1)(d).** This regulation applies only to claims with an effective date prior to January 4, 2004. (1) General rule. An individual whose marital status or domestic responsibilities are the primary cause of his or her voluntarily leaving employment shall be disqualified from benefits pursuant to the terms of RCW 50.20.050(((4))1)(d). This rule applies whether or not the individual took reasonable precautions to preserve his or her employment. Domestic responsibilities mean obligations or duties relating to the individual's immediate family, and include the illness, disability, or death of a member of the claimant's

"immediate family" as defined in WAC 192-~~((16-013))~~150-055.

(2) Exception. Notwithstanding the provisions of subsection (1) above, an individual who leaves employment because of the illness, disability, or death of a member of his or her immediate family as defined in WAC 192-~~((16-013))~~150-055 and who establishes good cause under RCW 50.20.050 ~~((2)(b))~~(1)(b)(ii), will not be subject to disqualification under RCW 50.20.050~~((4))~~(1)(d): Provided, That if such individual fails to establish good cause under RCW 50.20.050 ~~((2)(b))~~(1)(b)(ii), disqualification will be imposed under RCW 50.20.050~~((4))~~(1)(d) rather than under RCW 50.20.050(1).

AMENDATORY SECTION (Amending Order 82-17-052, filed 8/17/82)

WAC 192-16-016 ~~((Interpretive regulations—))~~**Satisfying disqualification under RCW 50.20.050~~((4))~~(1)(d) when separation is for reasons of marital status and marriage occurs after date of separation.** This regulation applies only to claims with an effective date prior to January 4, 2004.

In *Yamauchi v. Department of Employment Security*, 96 Wn.2d 773 (1982), the Washington state supreme court held that an individual who leaves work to be married and relocate to a place outside of reasonable commuting distance and who is not married at the time of the leaving does so for reasons of marital status and should be disqualified from benefits pursuant to RCW 50.20.050~~((4))~~(1)(d) if there is a causal nexus between the marital status and leaving work. However, the court also ruled that an individual who so leaves work shall not benefit from the lesser disqualification of RCW 50.20.050~~((4))~~(1)(d) prior to the date of the marriage and move.

(1) An individual who voluntarily leaves work to marry and relocate to a place outside of reasonable commuting distance has left work for reasons of marital status pursuant to RCW 50.20.050~~((4))~~(1)(d) if there is a causal nexus between the marriage and leaving work.

(2) Any individual who leaves work for reasons of marital status as described in subsection (1) above shall be granted no credit toward satisfying the disqualification of benefits under RCW 50.20.050~~((4))~~(1)(d) described as the alternate method of satisfying the disqualification in WAC ~~((192-16-017(2))~~192-150-090, for any week ending prior to marriage or relocation, whichever is the latter.

NEW SECTION

WAC 192-100-010 Reasonably prudent person defined. A reasonably prudent person is an individual who uses good judgment or common sense in handling practical matters. The actions of a person exercising common sense in a similar situation are the guide in determining whether an individual's actions were reasonable.

NEW SECTION

WAC 192-100-020 Continued claim defined. (1) You are a continued claim recipient if you:

- (a) Are monetarily entitled to benefits; and
- (b) Are nonmonetarily eligible for benefits; and
- (c) Have received credit for your waiting week or payment of benefits for one or more weeks in your benefit year and in the current continued claim series.

(2) Continued claim status will end following any combination of four or more consecutive weeks for which you do not file a claim or during which you are not an unemployed individual as defined in RCW 50.04.310.

NEW SECTION

WAC 192-100-030 Week defined. The term "week" means a period of seven consecutive calendar days beginning on Sunday at 12:01 a.m. and ending at midnight the following Saturday.

NEW SECTION

WAC 192-100-035 Effective date of claim defined. As provided in RCW 50.04.030, an unemployment claim will be effective on the Sunday of the calendar week in which the application for benefits is filed. This Sunday date is referred to as the "effective date of claim" or "claim effective date."

NEW SECTION

WAC 192-110-200 Maximum benefits payable—RCW 50.20.120(1)(b). When the three-month seasonally adjusted total unemployment rate reaches six and eight-tenths percent or less, the maximum benefits payable on a claim will be permanently reduced to 26 times an individual's weekly benefit amount or one-third of the individual's base year wages, whichever is less.

NEW SECTION

WAC 192-110-210 Claim cancellation. If you choose to cancel a claim in order to refile with a new effective date, any nonmonetary eligibility decision issued under the canceled claim will be null and void. A new decision will be issued which addresses your eligibility for benefits based on the effective date of your new claim.

NEW SECTION

WAC 192-120-050 Conditional payment of benefits. (1) If you are a continued claim recipient and your eligibility for benefits is questioned by the department, you will be conditionally paid benefits without delay for any week(s) for which you file a claim for benefits, until and unless you have been provided adequate notice and an opportunity to be heard.

(2) Conditional payments will not be made under the conditions described in WAC 192-140-200 and 192-140-210.

NEW SECTION

WAC 192-130-060 Notice to employer. (1) Whenever an individual files an initial application for unemployment benefits, a notice will be mailed to:

(a) The claimant's last employer, and
(b) Any prior employer from whom the claimant has a potentially disqualifying separation where there is insufficient subsequent employment to purge a separation disqualification. An individual will be presumed to have a potentially disqualifying separation when:

(i) For claims with an effective date prior to January 4, 2004, it has been less than seven weeks or the individual has not earned at least seven times his or her weekly benefit amount since the job separation; or

(ii) For claims with an effective date January 4, 2004, and later, it has been less than ten weeks or the individual has not earned at least ten times his or her weekly benefit amount since the job separation.

(2) Whenever an individual files an initial application for unemployment benefits and a benefit year is established, a notice will be mailed to all base year employers. This notice to base year employers will include information on wages reported and benefit charging related information and will request an employer response if the wage information is incorrect or if the employer wishes to request relief of benefit charging.

(3) Whenever an individual files an initial application for unemployment benefits, a notice will be mailed to any separating employer as provided in WAC 192-320-075. This notice will include information that the employer may be liable for all benefits paid on the claim as provided in RCW 50.29.021(2)(c).

(4) Whenever an individual files an additional claim for benefits (reopens an existing claim after subsequent employment), a notice will be mailed to the last employer reported by the

claimant and to any prior employer from who the claimant has a potentially disqualifying separation who has not previously been notified.

NEW SECTION

WAC 192-130-065 Mailing addresses for notice to employer. Notices to employers required by RCW 50.20.150 and WAC 192-130-060 will be mailed as follows:

(1) The notice to the last employer of the claimant will be mailed to the address provided by the claimant. However, an alternative mailing address may be used in the following circumstances:

(a) If the department has been notified that the employer is represented for unemployment insurance purposes by an employer representative or cost control firm, the notice to the last employer may be mailed directly to that firm; or

(b) If an employer has notified the department that unemployment claim notices should be mailed to a specified address, the notice to the last employer may be mailed directly to that address.

(2) The notice to any base year employer who has reported wages to the department will be mailed to the employer's mailing address of record provided by the employer for tax purposes.

(3) The notice to any other employer from whom the claimant has a potentially disqualifying separation (without sufficient subsequent employment to purge a separation disqualification) will be mailed to the address provided by the claimant.

NEW SECTION

WAC 192-130-070 Mailing of eligibility determinations—RCW 50.20.180. (1) An eligibility determination based on a job separation issue will be mailed to the following:

(a) The last employer, if the claimant was separated from employment for reasons other than lack of work;

(b) A previous employer from whom the claimant has a potentially disqualifying separation as provided in WAC 192-130-060 if the claimant was separated from employment for reasons other than lack of work;

(c) For claims with an effective date prior to January 4, 2004, to any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for a felony or gross misdemeanor connected with the work;

(d) For claims with an effective date of January 4, 2004 or later, to any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for gross misconduct connected with the work, or whose wage credits are deleted from the claimant's record as a result of the claimant's gross misconduct.

(2) An eligibility determination based on an issue other than a separation from employment will be mailed to an employer if the employer provides relevant information relating to eligibility for a specific week.

NEW SECTION

WAC 192-130-080 Procedure -- Separation issues. (1) No decision on a separation issue (RCW 50.20.050, 50.20.060, RCW 50.20.066) will be issued until both parties to the separation have had an opportunity to present information and rebuttal, if necessary and appropriate, on the matters at issue.

(2) If an employer does not respond within ten days to the notice required by WAC 192-130-060, the department may make a decision at that time based on available information.

(3) If the department receives information from the employer after the end of the ten day response period, but before the decision has been made, the information provided by the employer will be considered before making the decision if the information was mailed to the unemployment claims telecenter identified on the notice.

(4) If the department receives information from the employer after the end of the ten day period and within thirty days following the mailing of a decision, the department will consider that information for the purposes of a redetermination under RCW 50.20.160 or as an appeal of the decision.

(5) Any information received within thirty days of the mailing of the notice required by WAC 192-130-060 will be considered a request for relief of benefit charges under RCW 50.29.020 or RCW 50.29.021.

NEW SECTION

WAC 192-140-070 What happens if I do not establish that I am able to or available for work? (1) If you report that you were not able to work or not available for work in any week or do not report whether you were able to work or were available for work, and do not provide details regarding your ability to or availability for work as requested, the department will presume you are not able or not available for work and benefits will be denied under RCW 50.20.010(1)(c).

This denial is for a definite period of time, which is the week or weeks in which information on your ability to work or availability for work is incomplete.

(2) If you provide information that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed, and you do not provide information regarding your ability to or availability for work, benefits will be denied under RCW 50.20.010(1)(c).

This denial is for an indefinite period of time. It will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

NEW SECTION

WAC 192-140-075 What happens if I do not demonstrate that I am actively looking for work? (1) If you report that you were not actively seeking work in any week or do not report whether you made an active search for work and subsequently fail to report complete job

search details and other information when requested, the department will presume you are not actively seeking work and your benefits will be denied under RCW 50.20.010(1)(c).

(2) For the purpose of this section, “complete job search details” includes those elements required under WAC 192-180-015.

(3) This denial is for a definite period of time, which is the week or weeks in which your job search information is incomplete.

NEW SECTION

WAC 192-140-080 What happens if I do not comply with a job search directive? (1) If you have been issued a job search directive as provided in WAC 192-180-010, do not report a job search that meets the requirements outlined in the directive, and you do not provide additional job search information as requested or you respond with information that does not meet these requirements, the department will presume you are not actively seeking work as directed and benefits will be denied under RCW 50.20.010(1)(c).

(2) This denial is for a definite period of time, which is the week or weeks in which your job search information does not meet the specific requirements of the directive.

NEW SECTION

WAC 192-140-085 What happens if I do not respond to a request for information regarding late claim(s)? (1) If you file a claim late as defined in WAC 192-140-005 and do not respond to a request for an explanation of why the claim was filed late, the department will presume that the claim was filed late without good cause and benefits will be denied under RCW 50.20.010(1)(b) and WAC 192-140-005.

(2) This denial is for a definite period of time, which is the week or weeks that were filed late.

NEW SECTION

WAC 192-140-090 What happens if I do not report for reemployment services as provided in RCW 50.20.010(1)(e)? The commissioner may direct you in writing to report in person for reemployment services.

(1) **Exceptions.** You will not be required to participate in reemployment services if you:

- (a) Are a member in good standing of a full referral union;
- (b) Are attached to an employer as provided in WAC 192-180-005; or
- (c) Within the previous year have completed, or are currently scheduled for or participating in, similar services.

(2) **Minimum services.** The services will consist of one or more sessions which include, but are not limited to:

- (a) Local labor market information;
- (b) Available reemployment and training services;
- (c) Successful job search attitudes;
- (d) Self assessment of job skills and interests;
- (e) Job interview techniques;
- (f) The development of a resume or fact sheet; and
- (g) The development of a plan for reemployment.

(3) **Sanctions.** If you have received a directive, and fail to participate in reemployment services during a week, you will be disqualified from benefits for that week unless justifiable cause is demonstrated.

(4) **Justifiable cause.** Justifiable cause for failure to participate in reemployment services as directed will include factors specific to you that would cause a reasonably prudent person in similar circumstances to fail to participate. Justifiable cause includes, but is not limited to:

- (a) Your illness or disability or that of a member of your immediate family;
- (b) Your presence at a job interview scheduled with an employer; or
- (c) Severe weather conditions precluding safe travel.

Reasons for absence may be verified. In all such cases, your ability to or availability for work is in question.

NEW SECTION

WAC 192-140-100 What happens if I do not respond to a request for information regarding a discharge from work? (1) If you do not respond to a request for information regarding a discharge from work and have not provided sufficient information to identify or contact the employer, the department will presume you were discharged for misconduct connected with the work. For claims with an effective date prior to January 4, 2004, benefits will be denied under RCW 50.20.060. For claims with an effective date of January 4, 2004, and later, benefits will be denied under RCW 50.20.066. If you have provided the department with sufficient information to contact the employer, benefits will not be denied unless the employer establishes by a preponderance of evidence that you were discharged for misconduct connected with your work.

(2) This denial is for an indefinite period of time and will continue until you meet the requalification provisions of RCW 50.20.060 or RCW 50.20.066, as applicable.

NEW SECTION

WAC 192-140-120 What happens if I do not provide information regarding attendance at school? (1) If you or another party notifies the department that you are in school and you do not respond to a request for information regarding school attendance, the department will presume that you are registered for academic instruction of 12 or more credit hours and have a limited attachment to the labor market, and are not available for work. Benefits will be denied under RCW 50.20.095 and RCW 50.20.010(1)(c).

(2) This denial of benefits is indefinite in nature and will continue until you establish that you are eligible under RCW 50.20.095 and RCW 50.20.010(1)(c).

NEW SECTION

WAC 192-140-200 What happens if I certify that I am not able to or available for work? (1) Benefits will be reduced under RCW 50.20.010(1)(c) and RCW 50.20.130 without requiring additional information or interview if you file a weekly claim that:

- (a) States you were not available for work or were not able to work on one or two days of a week or weeks being claimed; and
- (b) The day or days to which this condition applies are normal working days in your regular occupation; and
- (c) The information supplied clearly supports this finding.

This denial is for a definite period of time and applies only to the day or days for which you specifically indicate you are ineligible for benefits.

(2) Benefits will be denied under RCW 50.20.010(1)(c) without requiring additional information or interview if you file a weekly claim that:

- (a) States you were not available for work or were not able to work for three or more days of a week or weeks being claimed; and
- (b) The days to which this condition applies are normal working days in your regular occupation; and
- (c) The information supplied clearly supports this finding.

This denial for a definite period of time and applies only to the week or weeks for which you specifically indicate you are ineligible for benefits.

(3) Benefits will be denied under RCW 50.20.010(1)(c) without requiring additional information or interview if you file a weekly claim that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed.

This denial is for an indefinite period of time. It will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

(4) If you file a weekly claim with information clearly stating that you do not intend to claim benefits for the week or weeks, benefits will be denied under RCW 50.20.010(1)(c) without requiring additional information or interview.

This denial is for a specific period of time, which is the week or weeks for which you specifically indicate you do not intend to claim benefits.

(5) Any denial of benefits under this section will be issued without delay.

NEW SECTION

WAC 192-140-210 What happens if I return to full-time work or report hours worked consistent with full-time work? If you report that you have returned to full-time work or report hours worked that are consistent with full-time work for that occupation, this

information is sufficient to find that you are no longer an unemployed individual as defined in RCW 50.04.310. This denial is for a specific period of time, which is the week or weeks for which you report full-time work or hours consistent with full-time work.

AMENDATORY SECTION (Amending order 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-150-050 Leaving work to accept bona fide job offer -- RCW 50.20.050
~~((2)(a))~~(1)(b)(i) and (2)(b)(i). If you leave work to accept a bona fide offer of employment, you will have good cause within the meaning of RCW 50.20.050~~((+))~~ if you satisfactorily demonstrate that:

- (1) Prior to leaving work, you received a definite offer of employment; and
- (2) You had a reasonable basis for believing that the person making the offer had the authority to do so; and
- (3) A specific starting date and the terms and conditions of the employment were mutually agreed upon; and
- (4) You continued in your previous employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job; and
- (5) The new job is in employment covered by Title 50 RCW or the comparable laws of another state or the federal government.

AMENDATORY SECTION (Amending Order 02-14-035, filed 6/25/02, effective 7/26/02)

WAC 192-150-055 Leaving work because of illness or disability -- General rules and definitions -- RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

- (a) You left work primarily because of such illness, disability, or death; and
- (b) The illness, disability, or death ~~((necessitated your leaving))~~ made it necessary for you to leave work; and

(c) You first exhausted all reasonable alternatives prior to leaving work, including:
(i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and

(ii) Asking ~~((that you))~~to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsections (1)(a)-(c) above, you terminate your employment and are not entitled to be reinstated in the same or similar position.

~~((2))3~~ Exception. You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1)(c) if you can show that doing so would have been a futile act.

~~((3))~~**4) Definitions.** For purposes of this chapter:

(a) "Disability" means a sensory, mental, or physical condition that:

(i) Is medically recognizable or diagnosable;

(ii) Exists as a record or history; and

(iii) Substantially limits the proper performance of your job;

(b) "Immediate family" means your spouse, children (including unborn children), step-children, foster children, or parents of either spouse, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

AMENDATORY SECTION (Amending Order 02-08-072, filed 4/2/02, effective 5/3/02)

WAC 192-150-060 Leaving work because of disability -- Notice to employer --
RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii). (1) If you leave work because of a disability you must notify your employer about your disabling condition before the date you leave work or begin a leave of absence. Notice to the employer shall include any known restrictions on the type or hours of work you may perform.

(2) Any restrictions on the type or hours of work you may perform must be supported by a physician's statement or by the terms of a collective bargaining agreement or individual hiring contract.

(3) Nothing in unemployment insurance law requires your employer to offer you alternative suitable work when you have a disability, or modify your duties so that you can perform your current job. However, any offer from your employer of other suitable work must be made prior to the date you leave work or begin a leave of absence. You are not required to request alternative work from your employer to be found available for work.

(4) If your employer offers you alternative work or otherwise offers to accommodate your disability, you must demonstrate good cause to refuse the offer. This may include, but is not limited to, information from your physician that the accommodation offered by your employer was inadequate to reasonably accommodate your medical condition, or information demonstrating that the alternative work offered you by your employer was not suitable.

(5) If you refuse an offer of work from any employer after your job separation or after beginning a leave of absence, the department will determine whether you refused an offer of suitable work as provided in RCW 50.20.080.

(6) If you are on a leave of absence due to your disability, you must promptly request reemployment from your employer when you are again able to return to work.

(7) This section also applies to individuals on a leave of absence because of a pregnancy-related disability.

(8) For claims with an effective date of January 4, 2004, or later, in addition to the requirements of this section, you are not eligible for unemployment benefits unless you terminate your employment and are not entitled to be reinstated to the same or similar position.

AMENDATORY SECTION (Amending Order 01-11-85, filed 5/16/01, effective 6/16/01)

WAC 192-150-065 What constitutes an employer-initiated mandatory transfer under RCW 50.20.050(~~(2)(e)~~)(1)(b)(iii)? (1) This section applies only to claims with an effective date prior to January 4, 2004.

(2) If your spouse's employer requires your spouse to relocate to another labor market area to retain a current job or to accept another job with that employer, the relocation will be considered an employer-initiated mandatory transfer. Examples of employer-initiated mandatory transfers include, but are not limited to:

(a) A plant closure where employees must move to another labor market area to continue employment with that employer;

(b) A change in job responsibilities, such as a promotion, with that same employer where the employer requires a move to another labor market area; or

(c) A restructuring of business operations by the employer requiring employees to move to another labor market area if they want to continue in their customary occupation.

AMENDATORY SECTION (Amending Order 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-150-085 How to qualify after benefits have been denied. (1) Benefits may be denied under RCW 50.20.050(~~(+)~~) for voluntarily leaving work, RCW 50.20.060 for being discharged for misconduct, and RCW 50.20.080 for refusing an offer of suitable work or job referral. The denial of benefits will continue indefinitely until you show that:

((~~(+)~~)a) At least seven calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits; and

((~~(2)~~)b) You have obtained bona fide work and earned wages of at least seven times your suspended weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

(2) For claims with an effective date of January 4, 2004, or later, benefits may be denied under RCW 50.20.066 for being discharged for misconduct or gross misconduct. The denial of benefits will continue indefinitely until you show that:

(a) At least ~~ten~~ calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits; and

(b) You have obtained bona fide work and earned wages of at least ~~ten~~ times your suspended weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

AMENDATORY SECTION (Amending Order 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-150-090 How to qualify for benefits after leaving work for marital or domestic reasons. This section applies only to claims with an effective date prior to January 4, 2004. RCW 50.20.050(~~1~~(~~(4)~~))(d) says that benefits will be denied if you quit your job for family reasons. In such cases, the law provides an alternative means for qualifying for benefits other

than through work and earnings. Under this alternative method, you must report in person to your WorkSource Office or local employment center in ten different weeks and establish that you are able to work, available for work, and actively seeking work each week.

If you are an interstate claimant or living in a remote area, you can qualify for benefits under this alternative method by calling the unemployment information and weekly claims line in each of ten different weeks and certifying that you are able to work, available for work, and actively seeking work each week. For purposes of this section, you are living in a remote area if a round trip of more than two hours by reasonably available public or private transportation is required to reach the nearest local employment center and return.

NEW SECTION

WAC 192-150-110 Mandatory military transfers—RCW 50.20.050(2)(b)(iii). (1)

Any military transfer will be considered mandatory if your spouse receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may establish good cause to quit work if you relocate for your spouse's employment that was due to a mandatory military transfer if:

(a) Your spouse's new duty station is outside your existing labor market and in Washington or another state (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) that allows benefits to individuals who quit work to accompany their military spouse; and

(b) You continued in your previous employment for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: U.S. Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

(4) The department will maintain a list of states that allow unemployment benefits to an individual who quits to accompany a military spouse. This list will be updated at least annually.

(5) Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse to a new duty location; or

(b) Your spouse leaves military service and you elect to relocate to your home of record or elsewhere.

NEW SECTION

WAC 192-150-115 Reduction in compensation of 25% or more—RCW 50.20.050(2)(b)(v). (1) "Compensation" means remuneration as defined in RCW 50.04.320.

(2) “Usual” includes amounts actually paid to you by your employer or, if payment has not yet been made, the compensation agreed upon by you and your employer as part of your hiring agreement.

(3) To constitute good cause for quitting work under this section, employer action must have caused the reduction in your usual compensation.

(4) All reductions in compensation occurring since the beginning of your base period to the date of separation will be included in the determination as to whether your compensation was reduced by 25% or more.

(5) The percentage of reduction will be based on your most recent pay grade, salary, or other benefits you received or have accepted on a permanent basis. It does not include any temporary raises or other compensation for performing temporary duties.

NEW SECTION

WAC 192-150-120 Reduction in hours of 25% or more—RCW 50.20.050(2)(b)(vi).

(1) Your “usual hours” will be determined based on:

(a) The hours of work agreed on by you and your employer as part of your individual hiring agreement;

(b) For seasonal jobs, the number of hours you customarily work during the season; or

(c) For piecework, the number of hours you customarily work to complete a fixed volume of work.

(2) To constitute good cause for quitting under this section, employer action must have caused the reduction in your usual hours.

(3) All reductions in hours occurring since the beginning of your base period through the date of separation will be included in the determination as to whether your hours were reduced by 25% or more.

(4) In determining the percentage of reduction, the department will not consider any temporary overtime or additional hours performed on a temporary basis.

NEW SECTION

WAC 192-150-125 Change in worksite—RCW 50.20.050(2)(b)(vii). (1) The location of your employment must have changed due to employer action. The change must have:

(a) Substantially increased the distance you travel to the new worksite or increased the difficulty or inconvenience of travel; and

(b) Resulted in a commute distance or time that is greater than is customary for workers in your job classification and labor market area.

(2) For purposes of this section:

(a) “Job classification” means your occupation at the time you quit work;

(b) “Labor market area” means the geographic area in which workers in your location and occupation customarily work. In determining whether a labor union’s jurisdictional area is

consistent with an individual member's labor market, the department will determine where the majority of union members in that member's location and occupation customarily work.

(3) Good cause for quitting work cannot be established under this section if the worksite location and distance to work was known at the time of hire.

NEW SECTION

WAC 192-150-130 Worksite safety—RCW 50.22.050(2)(b)(viii). (1) At the time of hire, you can reasonably expect that your worksite complies with applicable federal and state health and safety regulations. If, after beginning work or accepting the job offer, you become aware of a safety issue that was not previously disclosed by your employer, the department will consider the safety of the worksite to have deteriorated.

(2) To establish good cause for quitting work under this section, you must notify your employer of the safety issue and give your employer a reasonable period of time to correct the situation. For purposes of this section:

(a) "Employer" means your supervisor, manager, or other individual who could reasonably be expected to have authority to correct the safety condition at issue;

(b) "Reasonable period of time" means the amount of time a reasonably prudent person would have remained at the worksite or continued working in the presence of the condition at issue. In addition:

(i) For health or safety issues that present imminent danger of serious bodily injury or death to any person, your employer must take immediate steps to correct the situation;

(ii) If your employer has been issued a citation by a regulatory agency charged with monitoring health or safety conditions, the employer must correct the condition within the time period specified in the citation.

(c) "Serious bodily injury" means bodily injury which creates a probability of death, or which causes serious permanent disfigurement, or which causes a significant loss or impairment of the function of any bodily part or organ whether permanent or temporary.

NEW SECTION

WAC 192-150-135 Illegal activities at the worksite—RCW 50.20.050(2)(b)(ix). (1) Illegal activities include violations of both civil and criminal law.

(2) To establish good cause for quitting work under this section, you must notify your employer of the illegal activity and give your employer a reasonable period of time to correct the situation. You are not required to notify your employer before quitting when your employer is conducting the illegal activity and notifying your employer could jeopardize your safety or is contrary to other federal and state laws (for example, whistleblower protection laws).

(3) "Employer" means your supervisor, manager, or other individual who could reasonably be expected to have authority to correct the illegal activity at issue;

(4) A "reasonable period of time" is the period a reasonably prudent person would be expected to continue working in the presence of the activity at issue.

NEW SECTION

WAC 192-150-140 Change in usual work that violates religious or sincere moral beliefs—RCW 50.20.050(2)(b)(x). (1) For purposes of this section, “usual work” means job duties or conditions:

- (a) Originally agreed upon by you and your employer in your hiring agreement; or
- (b) Customary for workers in your job classification; or
- (c) You consistently performed during your base period; or
- (d) Mutually agreed to by you and your employer prior to the employer action changing your job duties.

(2) The following criteria will be used to determine whether you had good cause for quitting work under this section:

- (a) The change in your usual work must be the result of action taken by your employer;
- (b) The work must require you to violate your religious beliefs or sincere moral convictions; mere disapproval of the employer’s method of conducting business is not good cause for leaving work under this section;
- (c) You must notify your employer that the work violates your religion or sincere moral beliefs, unless doing so would be futile;
- (d) The work or activity must directly, rather than indirectly, affect your religious or moral beliefs; and
- (e) The objectionable condition must exist in fact, rather than be a matter of speculation.

(3) You will not have good cause for quitting work under this section if:

- (a) You are inconsistent or insincere in your objections;
- (b) The objection is raised as a sham or a means of avoiding work; or
- (c) You knew of the objectionable aspects of the work at the time of hire, or you continued working under the objectionable conditions longer than a reasonably prudent person holding similar beliefs would have continued.

NEW SECTION

WAC 192-150-150 When is a separation considered a refusal of new work? (1) Section 3304(a)(5) of the Federal Unemployment Tax Act and RCW 50.20.110 prohibit the denial of benefits to individuals who refuse to accept new work when the wages, hours, or other conditions of work are substantially less favorable to the individual than those prevailing for similar work in the locality.

(2) For purposes of this chapter, “new work” includes an offer by your present employer of:

- (a) Different duties than those you agreed to perform in your current employment contract or agreement; or
- (b) Different terms or conditions of employment from those in the existing contract or agreement.

(3) When your employer changes your pay, hours, or conditions of work in a manner that does not constitute good cause under RCW 50.20.050(2), the department will determine whether

the change constitutes an offer of new work. If it does, the department will also determine if the new work is substantially less favorable than similar work in your labor market area.

(a) If the department determines the change constitutes an offer of new work, and the new work is substantially less favorable, the separation will be treated as a layoff due to lack of work and the issue of the refusal of new work adjudicated under RCW 50.20.080.

(i) The refusal of new work will be adjudicated even if you have not claimed benefits for the week in which the refusal occurred; and

(ii) The employer offering the new work is an interested party to the work refusal decision.

(b) If the department determines the change does not constitute an offer of new work, or the new work is not substantially less favorable, the separation from work will be adjudicated as a voluntary quit under RCW 50.20.050(2).

(4) If the reduction in your pay or hours is ten percent or less, the department will presume that it is not substantially less favorable and adjudicate the separation under RCW 50.20.050(2). You can overcome this presumption by providing additional information to the department to support a finding that the job was not suitable as provided in RCW 50.20.110.

(5) If you continue working for your employer after being notified of the change(s) in working conditions, the department will consider that you have agreed to the new terms and conditions of employment and have accepted the offer of new work. If you subsequently quit work because of these changes, the department will consider that you have voluntarily left work for personal reasons. This provision does not apply when you give notice of your intent to quit work upon being notified of the change(s) in working conditions and simply continue to work during an agreed upon notice period. In addition, you may continue working during an employer-provided grievance or arbitration period in response to the change in working conditions without the department considering that you have accepted the new work.

(6) For purposes of this section, the following definitions apply:

(a) “Conditions of work” includes fringe benefits such as life and health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities and retirement provisions; and severance pay. It also includes job security and reemployment rights; training and promotion policies; wage guarantees; unionization; grievance procedures; work rules, including health and safety rules; medical and welfare programs; physical conditions such as heat, light and ventilation; shifts of employment; and permanency of work.

(b) “Prevailing” means the most typical or customary in a particular occupation for a given area. Whether a wage rate is prevailing for your labor market area will be determined based on information provided by the department’s labor market and economic analysis branch.

(c) “Similar work” means similarity of the operations performed, the skill, ability and knowledge required, and the responsibilities involved.

(d) “Substantially less favorable” means the work is materially reduced below the standard under which the majority of individuals in your occupation and labor market area customarily work, or the work would have a significantly unfavorable impact on you.

NEW SECTION

WAC 192-150-200 General provisions—Misconduct and gross misconduct—RCW 50.04.294 and RCW 50.20.066. (1) The action or behavior that resulted in your discharge or suspension from employment must be connected with your work to constitute misconduct or gross misconduct.

(2) The action or behavior must result in harm or create the potential for harm to your employer's interests. This harm may be tangible, such as damage to equipment or property, or intangible, such as damage to your employer's reputation or a negative impact on staff morale.

(3) RCW 50.04.294, subsections (1)(c) and (3)(b), will be distinguished as follows:

(a) Subsection (1)(c) "Carelessness or negligence that causes or would likely cause serious bodily harm to your employer or fellow employee" means that your action results in serious bodily injury or a reasonably prudent person would know it is likely to result in serious bodily injury.

(b) Subsection (3)(b) "Inadvertence or ordinary negligence in isolated instances" means that your action is an accident or mistake and is not likely to result in serious bodily injury.

NEW SECTION

WAC 192-150-205 Definitions—Misconduct and gross misconduct—RCW 50.04.294 and RCW 50.20.066. For purposes of this chapter, the following definitions will apply:

(1) "Willful" means intentional behavior done deliberately or knowingly, where you are aware that you are violating or disregarding the rights of your employer or a co-worker.

(2) "Wanton" means malicious behavior showing extreme indifference to a risk, injury, or harm to another that is known or should have been known to you. It includes a failure to act when there is a duty to do so, knowing that injury could result.

(3) "Carelessness" and "negligence" mean failure to exercise the care that a reasonably prudent person usually exercises.

(4) "Serious bodily harm" means bodily injury which creates a probability of death, or which causes significant permanent disfigurement, or which causes a significant loss or impairment of the function of any bodily part or organ.

(5) "Criminal act" means any act classified as a felony, gross misdemeanor, or misdemeanor under state or federal law.

(6) "Flagrant" means conspicuously bad or offensive behavior showing contemptuous disregard for the law, morality, or the rights of others. This blatant behavior must be so obviously inconsistent with what is right or proper that it can neither escape notice nor be condoned.

NEW SECTION

WAC 192-150-210 Willful or wanton disregard—RCW 50.04.294(1)(a) and (2). (1) “Repeated inexcusable tardiness” means repeated instances of tardiness that are unjustified or that would not cause a reasonably prudent person in the same circumstances to be tardy. Your employer must have warned you at least twice, either verbally or in writing, about your tardiness, and violation of such warnings must have been the immediate cause of your discharge.

(2) “Dishonesty related to employment” means the intent to deceive the employer on a material fact. It includes, but is not limited to, making a false statement on an employment application and falsifying the employer’s records.

(3) “Repeated and inexcusable absences” means repeated absences that are unjustified or that would not cause a reasonably prudent person in the same circumstances to be absent. Previous warnings from your employer are not required, but your repeated absences must have been the immediate cause of your discharge.

(4) A company rule is reasonable if it is related to your job duties, is a normal business requirement or practice for your occupation or industry, or is required by law or regulation.

(5) The department will find that you knew or should have known about a company rule if you were provided an employee orientation on company rules, you were provided a copy or summary of the rule in writing, or the rule is posted in an area that is normally frequented by you and your co-workers, and the rule is conveyed or posted in a language that can be understood by you.

(6) You are considered to be acting within your “scope of employment” if you are:

- (a) Representing your employer in an official capacity;
- (b) On your employer’s property whether on duty or not;
- (c) Operating equipment under your employer’s ownership or control;
- (d) Delivering products or goods on behalf of your employer; or
- (e) Acting in any other capacity at the direction of your employer.

NEW SECTION

WAC 192-150-215 Discharges for felony or gross misdemeanor or for gross misconduct -- Responsibility for providing information. In any job separation where there is a potential disqualification under RCW 50.20.065 or RCW 50.20.066, the employer is responsible for notifying the department in a timely manner of any resolution of issues.

If an employer notifies the department of a potential disqualification under RCW 50.20.065 or RCW 50.20.066 within ten days of receiving the notice required by WAC 192-130-060, the department will review the claimant's eligibility for benefits.

NEW SECTION

WAC 192-150-220 Discharges for gross misconduct or for felony or gross misdemeanor. (1) **Effective dates.** The provisions of RCW 50.20.065 will apply to claims with an effective date prior to January 4, 2004. The provisions of RCW 50.20.066 will apply to claims with an effective date of January 4, 2004, and thereafter.

(2) **Definitions.**

(a) "Criminal act" means every action defined as a crime by the applicable state or federal statutes, including felonies and gross misdemeanors.

(b) "Felony" means every crime that is defined as such by the applicable state or federal statutes.

(c) "Gross misdemeanor" means every crime which is defined as such by the applicable state or federal statutes.

(d) A "competent authority" is:

(i) A court (including magistrate or court commissioner), prosecuting attorney, or law enforcement agency; or

(ii) An administrative law judge; or

(iii) A regulatory agency or professional association charged by law with maintaining professional standards or codes of conduct; or

(iv) Any other person or body, other than your employer, with authority to administer disciplinary action against you.

(e) An admission to your employer or to an employee of the department that you have committed a criminal act is not considered an admission to a competent authority for the purposes of RCW 50.20.065 and RCW 50.20.066.

(3) **Canceling wage credits.**

(a) For claims with an effective date prior to January 4, 2004: If you have been discharged because of a felony or gross misdemeanor connected with your work of which you have been convicted or have admitted committing, all your hourly wage credits based on that employment since the beginning of your base period will be canceled.

(b) For claims with an effective date of January 4, 2004, and later: If you have been discharged for gross misconduct connected with your work:

(i) All your hourly wage credits based on that employment since the beginning of your base period will be canceled;

(ii) If your wage credits with this employer are fewer than 680 hours, the balance of wage credits up to 680 hours will be canceled proportionately among your base period employers according to each employer's share of your base period wages. Wages from each employer will be removed from the most recent quarter in which wages were reported.

(c) Wage credits may only be canceled based upon an admission of a criminal act if:

(i) You admit to each and every element of a criminal act which caused you to be discharged; and

(ii) The admission is made to a competent authority.

WAC 192-180-010 Job search requirements -- Directives -- RCW

50.20.010(1)(c)((3)) and 50.20.240. (1) **Do I have to look for work?** You must be actively seeking work unless you are:

- (a) Attached to an employer; ~~((or))~~
- (b) Participating in a training program approved by the commissioner; or
- (c) Unemployed due to strike or lockout as provided in RCW 50.20.090(2).

(2) **When should I start my job search?** You must look for work every week that you file a claim for benefits, unless you are exempt under subsection (1).

(3) **What are my weekly job search requirements?**

- (a) At a minimum, you must:
 - (i) Make job search contacts with at least three employers each week; or
 - (ii) If your claim is effective prior to January 4, 2004, participate in an approved ~~((documented))~~ in-person job search activity at the WorkSource Office or local employment center; or

(iii) If your claim is effective January 4, 2004 or later, participate in three approved in-person job search activities at the WorkSource Office or local employment center, or any combination of employer contacts or in-person job search activities for a total of three.

(b) Based on your individual circumstances, such as your occupation, experience, or labor market area, the department may issue you a directive requiring more than three employer contacts or job search activities ~~((a))~~ each week.

(c) ~~((This subsection does not apply i))~~ If you are a member of a full referral union ~~((:))~~ you must be in good standing with your union, eligible for dispatch, and comply with your union's dispatch or referral requirements. Your benefits may be denied for any weeks in which you fail to meet these requirements and you may be directed to seek work outside of your union.

(4) **What is a "job search contact"?** ~~((Usually a))~~ A job search contact is a contact with an employer ~~((in-person or by telephone))~~ to inquire about or apply for a job. You may use ~~((other))~~ job search methods that are customary for your occupation and labor market area, including in-person, telephone, internet, or telefax contacts. The work applied for must be suitable (see RCW 50.20.100) unless you choose to look for work in a lower skill area. A contact does not count if it is made with an employer whom you know is not hiring, or if the department determines the contact is designed in whole or in part to avoid meeting the job search requirements.

(5) **What is an "in-person job search activity"?** This is an activity provided through the WorkSource Office or local employment center that will assist you in your reemployment efforts. It includes, but is not limited to, ~~((resume development,))~~ job search workshops, training classes, ~~((and computer tutorials))~~ or other facilitated services provided by WorkSource staff and approved by the local WorkSource administrator. For claimants residing in Washington State, an in-person job search activity must be documented in the department's Services, Knowledge and Information Exchange System (SKIES) to qualify. For interstate claimants, the activity must be documented in the one-stop system in the state in which you reside.

(6) **What is a directive?** A directive is a written notice from the department telling you that specific methods of job search are required in order to meet the job search requirements. A written directive need not have been issued to deny benefits for failure to meet the job search requirements in subsection (3).

(7) **When is a directive issued?** The department can issue a directive to clarify or to increase the job search requirements you must meet. Examples include, but are not limited to, cases in which you need to:

- (a) Increase the number of employer contacts each week;
- (b) Change your method of seeking work (such as from resumes to in-person contacts);
- (c) Expand the geographic area in which your job search is conducted; or
- (d) Seek work in a secondary occupation.

(8) **When is the directive effective?** The directive is effective when it is given in writing by the department. It stays in effect until a new written directive is given, or it is rescinded in writing.

AMENDATORY SECTION (Amending Order 99-13-002, filed 6/3/99, effective 7/4/99)

WAC 192-180-015 Tracking job search activities -- RCW 50.20.240. (1) **Do I need to keep track of my job search activities?** You must keep a record or log of your job search contacts and the ((~~services~~)) in-person job search activities you receive through the WorkSource Office or local employment center unless you are:

- (a) A member of a full referral union; ((~~or~~))
- (b) Allowed benefits because you left work to protect yourself or a member of your immediate family from domestic violence or stalking as provided in RCW 50.20.050(1)(b)(iv) or (2)(b)(iv); or
- (c) Exempt from job search requirements under WAC 192-180-010(1).

(2) **What information do I need to keep in the log?** Your job search log must contain at least the following information:

- (a) For job search contacts, record the date contact was made; the employer's name, address and telephone number; the type of contact (in-person, telephone, etc.); the name of the person you contacted; the type of work you applied for; and the results of your contact;
- (b) For in-person job search activities at the local reemployment center, record the date contact was made; a description of the services you received or the activities in which you participated; and the results of your contact.

(3) **Is there a specific form I must use?** The department will supply you with a form (EMS 10313) to use in tracking your job search activities. You may use your own form or tracking method as long as all information required by this subsection is recorded.

(4) **How long should I keep my log?** Keep your log for at least sixty days after the end of your benefit year or thirty days after receiving your final payment on any extension of benefits, whichever is later.

AMENDATORY SECTION (Amending Order 99-13-002, filed 6/3/99, effective 7/4/99)

WAC 192-180-020 Monitoring job search activities -- RCW 50.20.240. (1) **Will my job search activities be monitored?** Every week that you file a claim for benefits, you must certify that you meet the job search requirements. The department may review your job search

activities at any time. If you have been paid benefits for five or more weeks in any benefit year, you must provide the department with a copy of your job search log upon request. You must bring a copy of your job search log to any ~~((eligibility))~~ job search review interview (see WAC 192-180-025) for which you have been scheduled.

(2) **Will the department verify the information on my job search log?** Employer contacts and other job search activities on your log will be verified whenever the department has a question about the information reported. In addition, when you are scheduled for a ~~((# eligibility))~~ job search review interview, your log will be verified with the listed employers on a random basis.

AMENDATORY SECTION (Amending order 99-13-002, filed 6/3/99, effective 7/4/99)

WAC 192-180-025 ~~((Eligibility))~~ Job search review interviews. (1) **What is a ~~((# eligibility))~~ job search review (JSR) interview ~~((ERI))~~?** The ~~((ERI))~~ JSR is an interview between you and a representative of the WorkSource Office or local employment center. Its purpose is to review your job search documentation, identify any barriers to your reemployment, develop a plan for resolving barriers that may be identified, and provide advice on how to improve your job search efforts. For interstate claimants, this interview may be conducted by telephone or by the local employment center in a contracted state.

(2) **Will my job search activities be reviewed?** Yes, you must bring your job search log to the interview. The interviewer will review your log with you and discuss areas in which your job search can be improved. The employer contacts and job search activities included in your log will be verified at random. The interviewer may further verify any reported contacts at his or her discretion.

(3) **How many weeks will be reviewed?** (a) The interviewer will review at least one week of your job search documentation. If the job search documentation is unsatisfactory, or you fail to appear for the JSR interview without being excused, you will be scheduled for a second interview in which all weeks claimed will be reviewed.

(b) If you are excused from attending the initial JSR interview, you will be rescheduled for a review of one week of your job search documentation.

(c) You may be excused from attending the initial JSR interview as scheduled **only** for the following reasons:

(i) Jury duty;

(ii) National Guard duty;

(iii) Natural disaster or acts of nature; or

(iv) Verifiable employment or a job interview.

(d) For purposes of this section, “all weeks” means the latest of the following:

(i) Weeks claimed since January 4, 2004;

(ii) Weeks claimed since you filed your application for benefits; or

(iii) Weeks claimed since your last JSR interview, if applicable.

(4) **Do I need to bring anything else to the JSR interview?** You must be prepared to present proof of your identity during the JSR interview. This includes:

(a) State or government issued photo identification; or

(b) Two of the following government-issued documents:

(i) Voter's registration card;
(ii) U.S. Military identification card or draft record;
(iii) Military dependent's identification card;
(iv) U.S. Coast Guard Merchant Mariner Card;
(v) Native American tribal document;
(vi) U.S. social security card;
(vii) Certification of Birth Abroad issued by the U.S. Department of State;
(viii) Original or certified copy of a birth certificate;
(ix) U.S. Citizen ID Card;
(x) ID Card for use of Resident Citizen in the United States; or
(xi) Unexpired employment authorization document issued by the United States Citizenship and Immigration Services (formerly the Immigration and Naturalization Service).

AMENDATORY SECTION (Amending Order 99-13-002, filed 6/3/99, effective 7/4/99)

WAC 192-180-030 Penalties. (1) **Is there a penalty if I don't look for work or fail to report for the JSR interview as directed?** Benefits will be denied if you fail to:

- (a) Meet the minimum job search requirements;
 - (b) Provide information about your job search activities and, once you have been paid five weeks of benefits, provide a copy of your job search log upon request;
 - (c) Comply with any job search directive issued by the department; or
 - (d) Report to a scheduled ((~~eligibility~~))job search review interview.
- (2) **How long will my benefits be denied?** Benefits will be denied for the specific week or week(s) in which you fail to act as described in subsection (1).

(3) What is the penalty if I don't attend a JSR that has been scheduled to review all weeks claimed? If you fail to appear for a review of your job search logs for all weeks claimed, fail to produce your job search logs for those weeks, or your logs fail to establish that you have met the minimum job search requirements, such failure will be treated as nondisclosure under RCW 50.20.160(3) and your benefits may be denied for any weeks at issue.

NEW SECTION

WAC 192-180-040 Directive to attend job search workshop or training course—

RCW 50.20.044. (1) The department may direct you, in writing, to attend a job search workshop or training course when it finds that your chances of finding employment will be improved by enrollment in such activity.

- (2) You will not be directed to attend a job search workshop or training course if:
- (a) You have an offer of bona fide work that begins within two weeks; or
 - (b) The workshop or training location is outside your labor market or would require you to travel further than the nearest WorkSource office or local employment center; or
 - (c) You are a member in good standing of a full referral union, unless you are also being required to begin an independent search for work or have been identified as a dislocated worker

as defined in RCW 50.04.075.

(3) If you receive a directive and fail without good cause to attend a substantial portion of the workshop or training course during a week, you will be ineligible for benefits for the entire week. Good cause includes your illness or disability or that of a member of your immediate family, or your presence at a job interview scheduled with an employer. Reasons for absence may be verified and may result in a denial of benefits under RCW 50.20.010.

(4) Participation in a job search workshop when directed meets the definition of an "in-person job search activity" as defined in WAC 192-180-010.

(5) When attending a job search workshop or training course as directed, you will not be ineligible for benefits for failure to be available for work or to actively seek work under the provisions of:

- (a) RCW 50.20.010(1)(c);
- (b) RCW 50.20.240; or
- (c) RCW 50.22.020(1).

NEW SECTION

WAC 192-200-005 Disqualification of students -- RCW 50.20.095. (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of 12 or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for 12 or more hours of instruction. You will be required to certify to the department that you are not currently registered for 12 or more credit hours and will not be registered for 12 or more credit hours for at least 60 days. If you begin classes within 60 days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than 60 days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

- (a) Are in approved training as provided by RCW 50.20.043; or
- (b) When you apply, you demonstrate by a preponderance of the evidence that your student status does not significantly interfere with your actual availability for work.

(4) **Definitions.** As used in this section:

- (a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;
- (b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-005.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent;

(d) "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence that the proposal is more probably true than not true.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50

RCW including:

- (a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;
- (b) RCW 50.20.010(1)(c) requiring claimants to be able and available for and actively seeking work; and
- (c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

NEW SECTION

WAC 192-200-010 Training defined—RCW 50.20.043. (1) The term "training" means a course of education with the primary purpose of training in skills that will allow you to obtain employment.

(2) The term "training" does not include beginning a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.

NEW SECTION

WAC 192-200-030 Unemployment benefits while in training. (1) To be eligible for unemployment benefits while in training, the following criteria must be met:

- (a) The training must be full-time as defined by the training facility; and
 - (b) You must be making satisfactory progress in training as defined in WAC 192-270-065.
- (2) You must notify the department if you discontinue or suspend training, change your course of study, or reduce enrollment to less than full-time.
- (3) If your enrollment drops below full-time or you are not making satisfactory progress, you may be required to show that you are meeting the availability for work and job search requirements of RCW 50.20.010(1)(c) and RCW 50.20.240, and the provisions of RCW 50.20.080 regarding failure to apply for, or refusal to accept suitable work.

CHAPTER 192-220 WAC OVERPAYMENT NOTICE AND ASSESSMENT

NEW SECTION

WAC 192-220-010 Overpayments -- Notification to individual. (1) If a potential overpayment exists, the department will provide you with an overpayment advice of rights, in writing, explaining the following:

- (a) The reasons you may have been overpaid;

- (b) The amount of the possible overpayment as of the date the notice is mailed;
- (c) The fact that the department will collect overpayments as provided in WAC 192-230-100;
- (d) The fact that final overpayments are legally enforceable debts which must be repaid whether or not you are claiming unemployment benefits;
- (e) The fact that these debts can be the basis for warrants which can result in liens, notices to withhold and deliver personal properties, garnishment of salaries, and possible sale of real and personal properties;
- (f) An explanation that if you are not at fault, you may request a waiver of the overpayment. Waiver means the overpayment does not have to be repaid; and
- (g) A statement that you have 10 days to submit information about the possible overpayment and whether you are at fault. Failure to do so means the department will make a decision based on available information about the overpayment and your eligibility for waiver.

NEW SECTION

WAC 192-220-020 Overpayments -- Fault provisions. (1) When an overpayment occurs, the department will make a finding of fault or nonfault based on information provided by you and your employer and from information contained in the department's records. After reviewing all such information, you will be considered to be at fault when the overpayment is:

- (a) The result of fraud, misrepresentation, or willful nondisclosure;
- (b) The result of a discharge for a felony or gross misdemeanor under RCW 50.20.065;
- (c) The result of a discharge for gross misconduct under RCW 50.04.294; or
- (d) Based on the presence of all of the following three elements:
 - (i) You were paid benefits in an amount greater than you were entitled to receive and you accepted and retained those benefits; and
 - (ii) The payment of these benefits was based on incorrect information or a failure to furnish information which you should have provided as outlined in the information for claimants booklet, claimant directives and other reasonable written communications issued by the department; or information which you caused another person to fail to disclose; and
 - (iii) You had notice that the information should have been reported.

(2) You may be considered at fault, even though you provided the department with all relevant information before the benefit eligibility decision was issued, if the overpayment is the result of payment that you should reasonably have known was improper. The following are some, but not all, examples where you should reasonably have known that a payment was improper and as a result are at fault. These are intended as examples only and do not mean that the department would rule in this manner in every such situation.

- (a) You correctly reported earnings but the department paid benefits at the full amount or incorrectly deducted the earnings.
- (b) You reported that you were unavailable for one or more customary work days, but the department paid at the full amount and the payment was not a conditional payment.
- (c) You received a retroactive pension payment that you had applied for and were reasonably sure would be awarded.
- (d) You did not inform the department that you were eligible for benefits on an unexpired claim against another state.

(e) A lower level decision was reversed by the office of administrative hearings, the commissioner or a court because of new information that you did not disclose to the department.

(f) Other circumstances in which department fact finding indicates that you knew the payment was improper.

(3) In deciding whether or not you are at fault, the department will also consider education, mental abilities, emotional state, your experience with claiming unemployment benefits, and other elements of your personal situation which affect your knowledge and ability to comply with reporting all relevant information. This includes information contained in the information for claimants booklet, claimant directives and other reasonable written communications issued by the department.

(4) You will be considered to be without fault when you provided the department with all relevant information before the benefit eligibility decision is issued and the overpayment is the result of payment that you would not reasonably have known was improper. The following are some, but not all, examples of instances in which you may not reasonably have known that a payment was improper and as a result are not at fault. These are intended as examples only and do not mean that the department would rule in this manner in every such situation.

(a) The department erroneously removed a payment stop, resulting in improper payment.

(b) You received a retroactive pension which was backdated by the pension source, not at your request.

(c) A combined wage or federal claim was filed against Washington that should have been filed against another state.

(d) Extended benefits were paid by the department when you would have been eligible for a new claim against Washington or another state.

(e) A lower level decision, in which you had provided all information, was reversed by the office of administrative hearings, the commissioner or a court.

(f) Other circumstances in which department fact finding indicates you did not know the payment was improper.

NEW SECTION

WAC 192-220-030 Overpayments -- Equity and good conscience provisions. (1)

The department will not consider or grant waiver of an overpayment and will not consider or accept an offer in compromise of an overpayment that is:

(a) Based on an overpayment decision written by a state other than Washington;

(b) The result of a conditional payment as provided in WAC 192-23-900; or

(c) For claims with an effective date of January 4, 2004, and later, the result of being discharged for misconduct or gross misconduct as provided in RCW 50.20.066(5).

(2) Except as provided in subsection (1), the department will grant waiver of an overpayment when it is found that you were without fault in the overpayment and when it is determined that to require repayment would be against equity and good conscience. It will be against equity and good conscience to deny waiver when repayment of the overpayment would deprive you of income required for necessary living expenses unless there are unusual circumstances which would argue against waiver.

(3) You will be required to provide financial information to the department to determine

if the overpayment will be waived. Your failure to provide such information within 10 days from the request date will result in the department making a decision, based on available information, regarding your eligibility for waiver. The department may verify any financial information you provide. Any amount waived based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.

(4) The financial information requested includes:

(a) Your income and, to the extent available to you, other financially contributing members of the household for the previous month, the current month and the month following the date the financial information is requested.

(b) Your current and readily available liquid assets. Liquid assets may include, but are not limited to, checking and savings account balances, stocks, bonds and cash on hand.

(c) Your expenses for the previous month, the current month and the month following the date the financial information is requested.

(5) If your average monthly expenses equal or exceed your average monthly income and there are no substantial liquid assets available, waiver of the overpayment will be considered. The presence of unusual circumstances may justify waiver on other than a financial basis when not to waive would be unconscionable.

(6) When you have been denied waiver or waiver was not considered, you may enter into a payment agreement with the department.

(7) Except as provided in subsection (1), when you have been denied waiver or have been unable to reach a payment agreement with the department you may make an offer in compromise as provided in RCW 50.24.020. The basis for allowing or denying an offer in compromise will be the same criteria used by the department for allowing or denying waiver of an overpayment. Any overpayment amount compromised based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.

CHAPTER 192-230 WAC RECOVERY OF OVERPAYMENTS

NEW SECTION

WAC 192-230-100 Recovery of benefit overpayment -- By repayment or offset against past or future benefits. (1) If you do not repay an overpayment in full or make the minimum monthly payments provided for in WAC 192-28-130, the overpayment will be deducted from benefits payable for any week(s) you claim.

(2) For overpayments assessed under RCW 50.20.010 because you asked to have your unemployment insurance claim cancelled, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. The department will ensure you are informed of the advantages and/or disadvantages of cancelling an existing claim to file a new claim.

(3) If you are currently claiming benefits, the overpayment will not be offset from future weeks payable unless you have missed two or more payments as provided in WAC 192-28-130. If you have missed two or more payments, the overpayment will be offset as described in (a) and

(b) below:

(a) If the overpayment was caused by a denial for fraud, misrepresentation, or willful nondisclosure as provided in RCW 50.20.070, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

(4) If the overpayment has been assessed by another state, the amount deducted will be as follows:

(a) For overpayments caused by a denial for fraud, misrepresentation, or willful nondisclosure, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

(5) If you have been denied waiver, or if waiver was not considered, you will be notified in writing of your right to enter into a payment agreement with the department or to make an offer in compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.065 or RCW 50.20.070 unless there are unusual circumstances which would justify a compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.066.

AMENDATORY SECTION (Amending Order 03-06-038, filed 2/26/03, effective 3/29/03)

WAC 192-240-035 How to qualify for regular shareable or extended benefits after leaving work for marital or domestic reasons -- RCW 50.22.020(7). This section applies only to claims with an effective date prior to January 4, 2004. If you were denied benefits because you left work for family reasons as provided in RCW 50.20.050(~~((4))~~)(~~1~~)(d), you could qualify for regular benefits either through work and earnings or by reporting in person to your local employment center for each of ten weeks. However, you are not eligible for regular shareable or extended benefits unless, after leaving work, you obtained work and earned wages of seven times your weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

AMENDATORY SECTION (Amending Order 03-06-038, filed 2/26/03, effective 3/29/03)

WAC 192-240-040 Penalties. (1) If you claim regular shareable or extended benefits during a week in which you failed to accept any offer of work, or failed to accept a referral or apply for any work as directed by the department:

(a) Benefits will be denied under RCW 50.20.080 if the work was suitable as defined by RCW 50.20.100 and 50.20.110, and you did not have good cause for failing to apply for or accept work;

(b) If benefits are denied as provided in subsection (1)(a), you will also be denied benefits as provided in RCW 50.22.020;

(c) Benefits will be denied under only RCW 50.22.020 if the work was suitable as provided in that statute and WAC 192-240-020, but did not meet the provisions of RCW 50.20.100 and 50.20.080.

(2) If you claim regular shareable or extended benefits during a week in which you failed to meet the job search requirements of WAC 192-240-030, benefits will be denied under RCW 50.22.020, except as provided in subsection (4).

(3) A denial of benefits under RCW 50.22.020 starts the week in which the failure occurs, and continues indefinitely until you show that:

(a) You have worked in at least four weeks; and

(b) You have earned at least four times your weekly benefit amount. The employment does not need to be covered by Title 50 RCW.

(4) If you fail to meet the job search requirements of WAC 192-240-030 because you are hospitalized for treatment of an emergency or life-threatening condition, benefits will be denied under RCW 50.20.010(~~((3))~~)(1)(c). The denial period is only for the week or weeks in which the hospitalization occurred.

REPEALERS

The following sections of the Washington Administrative Code are repealed:

WAC 192-12-011	Continued claim definitions.
WAC 192-12-012	Conditional payment of continued claim recipients when eligibility is questioned.
WAC 192-12-020	Week defined.
WAC 192-12-180	Training defined.
WAC 192-12-184	Training—Unemployment benefits while pursuing training.
WAC 192-12-190	Directive to attend job search workshop or training or retraining course according to RCW 50.20.044.
WAC 192-12-300	Mailing addresses for notice to employer.
WAC 192-12-310	Notice to employer.
WAC 192-12-320	Mailing of determination notices under RCW 50.20.180.
WAC 192-12-330	Predetermination procedure—Separation issue.
WAC 192-12-340	Discharges for misconduct for felony or gross misdemeanor—Responsibility for providing information.
WAC 192-16-019	Interpretative regulations—Effective date of RCW 50.20.065—Discharges for felony or gross misdemeanor.
WAC 192-16-023	Interpretative regulations—Disqualification of students—RCW 50.20.095.
WAC 192-23-014	Failure to establish ability to or availability for work.
WAC 192-23-015	Failure to establish active search for work.
WAC 192-23-016	Failure to meet work search requirements.
WAC 192-23-017	Failure to respond to a request for information regarding late filing of claims.

WAC 192-23-019	Directive to report for reemployment services.
WAC 192-23-061	Failure to respond to a request for information regarding a discharge from work.
WAC 192-23-096	Failure to provide information regarding attendance at school.
WAC 192-23-800	Certification of ineligibility.
WAC 192-23-810	Certification of return to full-time work or report of hours worked consistent with full-time work.
WAC 192-28-105	Recovery of benefit overpayment—Notification to individual.
WAC 192-28-110	Recovery of benefit overpayment—Fault provisions.
WAC 192-28-115	Recovery of benefit overpayment—Equity and good conscience provisions.
WAC 192-28-120	Recovery of benefit overpayment—By repayment or offset against past or future benefits.